

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

MICHAEL J. HOWARD,

Petitioner,

: Case No. 1:19-cv-274

- vs -

District Judge Matthew W. McFarland
Magistrate Judge Michael R. Merz

WARDEN,

Pickaway Correctional Institution,

:

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case is before the Court on Petitioner's Motion for Relief from Judgment (ECF No. 27). On the Court's Notice (ECF No. 28), Respondent has advised the Court that he does not oppose the Motion. As a post-judgment motion, it requires a report and recommendation from the referral Magistrate Judge. 28 U.S.C. § 636(b)(3).

Petitioner seeks relief from the judgment dismissing his Petition with prejudice under Fed.R.Civ.P. 60(b)(1) which allows relief from judgment occasioned by, *inter alia*, mistake. Here it appears the Agreed Entry granting Petitioner until November 6, 2020 (ECF No. 24) may have crossed in the docketing process with the Entry and Order adopting the Report and Recommendations as unobjected to and the Judgment (ECF Nos. 25 and 26). To rectify that clerical error and allow Petitioner to be heard on the merits, it is respectfully recommended that

the Motion to Vacate be GRANTED and Petitioner be allowed fourteen days from the entry of a decision by Judge McFarland on this Report to file objections to the Report on the merits.

October 27, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal.